

**REMARKS**

The present application is a CPA of application 09/425,088 and the After Final Amendment filed on May 16, 2003 has been entered. Claims 1-5 and 7-17 remain pending in this application.

In the Final Office Action, claims 1-4, 8-10 and 12-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Somers (U.S. Patent No. 6,243,396) in view of Schuster et al. (U.S. Patent No. 6,363,053; hereinafter Schuster). The rejection is respectfully traversed.

The applicant notes that the arguments below reiterate some of the arguments made in the After Final Amendment. In addition, the remarks below address the comments made in the Advisory Action mailed May 29, 2003.

Claim 1 recites an apparatus that includes a service level agreement manager that includes an admission controller, a performance measurement module and a specification module. Claim 1 recites that the performance measurement module is configured to measure performance of the service implementation and modify an estimated capacity of the service provider based on the measured performance.

As discussed in the After Final Amendment, the Final Office Action states that Somers discloses a performance measurement module that is configured to measure performance of a service implementation, but admits that Somers does not disclose modifying an estimated capacity of the service provider based on the measured performance. The Final Office Action, however, states that Schuster discloses this feature and points to col. 12, lines 53-67 and col. 13, lines 1-7 for support (Final Office Action – page 3). The applicant respectfully disagrees.

Schuster at col. 12, line 53 to col. 13, line 7 discloses that quantifiable quality of service (QoS) characteristics from service level agreement (SLA) 338 are stored in SLA QoS block 340

(See Schuster – Fig. 7). A comparator 342 receives the specified QoS characteristics from block 340 and the measured QoS characteristics from QoS ID block 334 and compares the measured QoS characteristics to the specified QoS characteristics. An output 344 from comparator 342 indicates conformance to the SLA. The conformance output 344 may be in the form of a report that indicates a percentage by which a measured QoS characteristic deviates from the QoS characteristic specified in SLA 338. Periods of non-compliance may be cumulatively measured to give an estimate of percentage compliance for a billing period. The report may be used as a basis for reduced billing as a result of non-compliance.

In summary, this portion of Schuster may disclose comparing measured QoS characteristics to characteristics specified in an SLA, generating a report based on compliance/non-compliance to the SLA and using the report as a basis for reducing a bill. This portion of Schuster, however, clearly does not disclose modifying an estimated capacity of the service provider based on the measured performance, as recited in claim 1. In other words, using a compliance/non-compliance report as a basis for reduced billing is not equivalent to and does not suggest modifying an estimated capacity of a service provider based on a measured performance, as recited in claim 1. In contrast, Schuster merely discloses that after a compliance measurement is made, the user's bill may be reduced based on the level of compliance during a billing period. Therefore, the portion of Schuster pointed to in the Office Action, as well as any other portion, does not disclose or suggest modifying an estimated capacity of a service provider based on the measured performance.

In response to these arguments, the Advisory Action states that “the estimated compliance time is a measure of the capacity of the network over time. This estimate is made based on performance measurements taken during network monitoring” (Advisory Action – page 2). The

Advisory Action also points to col. 12, lines 26-53 of Schuster as allegedly disclosing modifying an estimated capacity of a service provider based on the measured performance.

Schuster at col. 12, lines 26-53 discloses determining whether a service provider is complying with an SLA and generating a report indicating the level of conformance. The report may estimate a percentage of compliance time (Schuster – col. 12, lines 37-39). Measuring or estimating a percentage of compliance time by a service provider is not equivalent to modifying an estimated capacity of a service provider based on the measured performance. Therefore, even if estimating compliance time is a measure of the capacity of the network, as alleged in the Advisory Action, this does not read on or suggest modifying an estimated capacity of a service provider based on the measured performance, as recited in claim 1. In other words, merely estimating compliance time to generate a bill does not read on or suggest that the estimated system capacity is modified based on the estimated compliance time.

Therefore, for at least the reasons discussed above, the combination of Somers and Schuster does not disclose or suggest each of the features of claim 1. Accordingly, withdrawal of the rejection and allowance of claim 1 are respectfully requested.

Claim 2 depends on claim 1 and is patentable for at least the reasons given with respect to claim 1. Accordingly, withdrawal of the rejection and allowance of claim 2 are respectfully requested.

Independent claims 3, 8 and 12 recite features similar to those discussed above with respect to claim 1. Similar to the discussion above with respect to claim 1, neither Somers nor Schuster discloses or suggests each of the features of claims 3, 8 and 12. Accordingly, withdrawal of the rejections and allowance of claims 3, 8 and 12 are respectfully requested.

Claims 4, 9, 10, 13 and 14 variously depend on claims 3, 8 and 12 and are patentable for at least the reasons their respective independent claims are patentable. Accordingly, withdrawal of the rejections and allowance of claims 4, 9, 10, 13 and 14 are respectfully requested.

Claim 5 was rejected in the Final Office Action under 35 U.S.C. § 103 as being unpatentable over Somers in view of Ball et al. (U.S. Patent No. 6,446,200; hereinafter Ball) and claim 7 has been rejected under 35 U.S.C. § 103 as being unpatentable over Somers in view of Ball and further in view of Schuster.

Claim 5 incorporates features from canceled claim 6, which was previously rejected based on the combination of Somers, Ball and Schuster. Claim 5 recites modifying an estimated capacity associated with the service organization based on the at least one performance measurement. The Office Action admits that neither Somers nor Ball discloses this feature, but states that Schuster discloses this feature and points to col. 12, line 53 to col. 13, line 7 for support (Office Action – page 10). The applicant respectfully disagrees.

As discussed above with respect to claim 1, this portion of Schuster, as well as any other portion, does not disclose modifying an estimated capacity associated with a service organization based on the at least one performance measurement, as recited in amended claim 5.

For at least the reasons discussed above, the combination of Somers, Ball and Schuster does not disclose or suggest each of the features of claim 5. Accordingly, withdrawal of the rejection and allowance of claim 5 are respectfully requested.

Claim 7 is dependent on claim 5 and is believed to be allowable for at least the reasons claim 5 is allowable. Accordingly, withdrawal of the rejection and allowance of claim 7 are respectfully requested.

Claims 11 and 15 have been rejected under 35 U.S.C. § 103 as being unpatentable over Somers in view of Schuster and further in view of Ball. The rejection is respectfully traversed.

Claims 11 and 15 are dependent on claims 8 and claim 12, respectively, and are believed to be allowable for at least the reasons claims 8 and 12 are allowable. Ball does not make up the deficiencies in the disclosures of Somers and Schuster with respect to claims 8 and 12 discussed above. Accordingly, withdrawal of the rejection and allowance of claims 11 and 15 are respectfully requested.

Claims 16 and 17 have been rejected under 35 U.S.C. § 103 as being unpatentable over Somers in view of Schuster and further in view of Aronberg et al. (U.S. Patent No. 6,117,188; hereinafter Aronberg) and Knight et al. (U.S. Patent No. 6,442,608; hereinafter Knight). The rejection is respectfully traversed.

Claims 16 and 17 are dependent on claim 8 and are believed to be allowable for at least the reasons claim 8 is allowable. Neither, Aronberg nor Knight, taken singly or in combination, makes up for the deficiencies in the disclosures of Somers and Schuster described above with respect to claim 8. In addition, claims 16 and 17 recite additional features not disclosed or suggested by any of the cited references.

For example, claim 16 recites that each of the plurality of client processes is assigned a number of tokens and when determining whether to accept the request from a first client process to a first service level manager, the first service level manager is configured to determine whether to accept the request based on the number of tokens associated with the first client process. As to claim 16, the Final Office Action states that Knight discloses a network in which each of a number of client processes is assigned a number of sessions and that a first service level manager is configured to determine whether to accept a request from a first client process based on the

number of sessions associated with the first client process and points to col. 23, line 33 to col. 25, line 48 for support (Final Office Action – page 11). The Final Office Action admits that Knight does not disclose the use of tokens associated with a client process, but states that Aronberg discloses the use of a fixed number of tokens used to regulate network access and points to col. 4, line 56 to col. 5, line 30 for support (Final Office Action – page 12). The Final Office Action further states that it would have been obvious to combine Knight and Aronberg “because tokens provide a functional alternative to the counter as implemented in Knight” (Final Office Action – page 12). The applicant respectfully disagrees.

Knight is directed to managing the access of a network system using distributed authorization controlled by distributed nodes (Knight – col. 1, lines 15-18). Aronberg, in contrast, is directed to a system for distributing software in a network environment (Aronberg – Abstract). Knight and Aronberg are clearly directed to different environments and it would not have been obvious to combine features from these disparate environments without the benefit of the applicant’s disclosure. The applicant also notes that no portion of either Knight or Aronberg is pointed to as providing objective motivation for combining these references.

Further, the Final Office Action states that it would have been obvious to combine the teachings of Somers-Schuster with the teachings of Knight-Aronberg “because limiting access of specific clients would ensure a more consistent level of service for all clients” (Final Office Action – page 12). The applicant respectfully disagrees.

No portion of any of the four references is pointed to as providing objective motivation for combining the four references. The motivation provided in the Final Office Action is a conclusory statement regarding an alleged benefit resulting from the combination. Such motivation does not satisfy the requirements of 35 U.S.C. § 103.

In addition, as admitted in the Final Office Action, Knight does not disclose assigning a number of tokens to each of a number of client processes, as recited in claim 16, but indicates that tokens may be used as a functional alternative to the counter used in Knight. The Final Office Action also relies upon Aronberg as disclosing the use of tokens (Final Office Action – page 12). More particularly, Aronberg at col. 4, line 56 to col. 5, line 30 has been used to allegedly disclose the use of tokens to regulate network access. This portion of Aronberg discloses that a dialog box 401 may be used by an administrator to control the number of concurrent software distributions (See Fig. 4). A token server box 401B may be checked to indicate use of the token server feature. An agent may then wait for a token to allow the user to download applications (Aronberg – col. 5, lines 1-15). This portion of Aronberg does not disclose determining whether to accept a request based on the number of tokens associated with a client process, as recited in claim 16. Therefore, even if Knight and Aronberg were combined with the combination of Somers and Schuster, the claimed invention would not result.

In response to these arguments, the Advisory Action states that Knight and Aronberg both solve the same problem of limiting access of certain entities to resources. The Advisory Action also states that one of ordinary skill in the art “might want to use a token server rather than a counter for performance reasons (as discussed by Aronberg at col. 2, lines 3-22)” (Advisory Action – pages 2-3).

Aronberg at col. 2, lines 3-22, as discussed above, discloses distributing a token to each requesting agent on a workstation downloading applications in order to control the number of simultaneous distributions. As further discussed above, Aronberg discloses that an agent must wait for a token to allow the user to download an application (Aronberg – col. 5, lines 1-15). The applicant maintains that the environment of Aronberg is significantly different than the

environment of Knight, which is directed to managing the access of a network system using distributed authorization that is controlled by distributed nodes (Knight – col. 1, lines 15-18). Neither reference suggests replacing the session counting mechanism of Knight with a system in which an agent must check a token server box 401B (Aronberg – Fig. 4) and then wait for a token, as disclosed in Aronberg. Therefore, the applicant maintains that one of ordinary skill in the art would not have been motivated to combine features from these references and that the only motivation to combine features from these disparate references comes from hindsight reasoning, which may not be properly relied upon when making a rejection under 35 U.S.C. § 103.

For at least these additional reasons, withdrawal of the rejection and allowance of claim 16 are respectfully requested.

Claim 17 recites that when the request from the first client process is accepted, the first service level manager is further configured to deduct a number of tokens from the first client process. As to claim 17, the Final Office Action states that Knight discloses deducting a count associated with a first client process when a request from a client process is accepted and points to Knight at col. 22, line 23 to col. 25, line 48 for support (Final Office Action – page 12). The Final Office Action further states that it would have been obvious to use tokens instead of a count for the reasons discussed with respect to claim 16. The applicant respectfully disagrees.

Knight discloses that an entity, such as a company, may be assigned a threshold value associated with a maximum number of sessions that may be established for the entity at a particular time (Knight – col. 22, lines 35-47). Assigning sessions to an entity, such as a company, is not equivalent to assigning sessions to each of a plurality of client processes. In addition, Knight does not further disclose deducting a number of sessions from the client process

if the request is accepted. Rather, Knight, as best understood by the applicant, merely compares the local session threshold value with the local session counter value to determine whether to authorize the request (Knight – col. 23, line 45 to col. 24, line 65). This is not equivalent to and does not suggest deducting a number of sessions or tokens from a first client process if the request is accepted. Aronberg also does not disclose deducting a number of tokens from the first client process when a request from the first client process is accepted. Therefore, the combination of Somers, Schuster, Aronberg and Knight does not disclose or suggest each of the features of claim 17.

In response to these arguments, the Advisory Action states that Knight discloses updating a counter after the session has been accepted, thereby decrementing the number of available sessions and that Aronberg discloses that a token given to an agent is deducted from those tokens which are available (Advisory Action – page 3). This may be true. Claim 17, however, recites deducting a number of tokens from a first client process. The applicant maintains that decrementing a number of sessions available to an entity, such as a company, as disclosed by Knight and providing tokens to agents to allow users to download applications, as disclosed by Aronberg, even if combined, does not read on or suggest deducting a number of tokens from a first client process when the request from the first client process is accepted, as recited in claim 17.

For at least these additional reasons, withdrawal of the rejection and allowance of claim 17 are respectfully requested.

**CONCLUSION**

In view of the foregoing remarks, the applicant respectfully requests withdrawal of the outstanding rejections and the timely allowance of this application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2339 and please credit any excess fees to such deposit account.

Respectfully submitted,

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